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Attorney for Plaintiff, CRAIG ST. JOHN

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

CRAIG ST. JOHN,)	Case No.:
)	
Plaintiff,)	COMPLAINT AND DEMAND FOR
)	JURY TRIAL
vs.)	
)	(Unlawful Debt Collection Practices)
WINDHAM PROFESSIONALS INC.,)	
)	
Defendant.)	

COMPLAINT

CRAIG ST. JOHN (Plaintiff), by his attorneys, KROHN & MOSS, LTD., alleges the following against WINDHAM PROFESSIONALS INC. (Defendant):

INTRODUCTION

1. Count I of Plaintiff's Complaint is based on the Fair Debt Collection Practices Act, 15 U.S.C. 1692 *et seq.* (FDCPA). According to the FDCPA, the United States Congress has found abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many debt collectors, and has determined that abusive debt collection practices contribute to the number of personal bankruptcies, to marital instability, to the

1 loss of jobs, and to invasions of individual privacy. Congress wrote the FDCPA to
2 eliminate abusive debt collection practices by debt collectors, to insure that those debt
3 collectors who refrain from using abusive debt collection practices are not competitively
4 disadvantaged, and to promote consistent State action to protect consumers against debt
5 collection abuses. *15 U.S.C. 1692(a) – (e)*.

- 6 2. Plaintiff brings this action to challenge Defendant's actions with regard to attempts by
7 Defendant, a debt collector, to unlawfully and abusively collect a debt allegedly owed by
8 Plaintiff, and this conduct caused Plaintiff damages.
- 9 3. Defendant acted through its agents, employees, officers, members, directors, heirs,
10 successors, assigns, principals, trustees, sureties, subrogees, representatives, and
11 insurers.

12 JURISDICTION AND VENUE

- 13 4. Jurisdiction of this court arises pursuant to *15 U.S.C. 1692k(d)*, which states that such
14 actions may be brought and heard before "any appropriate United States district court
15 without regard to the amount in controversy" and *28 U.S.C. 1367* grants this court
16 supplemental jurisdiction over the state claims contained therein.
- 17 5. Because Defendant maintains a business office and conducts business in the state of
18 California, personal jurisdiction is established.
- 19 6. Venue is proper pursuant to *28 U.S.C. 1391(b)(2)*.
- 20 7. Declaratory relief is available pursuant to *28 U.S.C. 2201 and 2202*.

21 PARTIES

- 22 8. Plaintiff is a natural person who resides in the city of Scottsdale, Maricopa County,
23 Arizona and is allegedly obligated to pay a debt and is a "consumer" as that term is
24 defined by *15 U.S.C. 1692a(3)*.
- 25 9. Defendant is a national company with a business office in Salem, New Hampshire.

1 10. Defendant uses instrumentalities of interstate commerce or the mails in any business the
2 principal purpose of which is the collection of any debts, or who regularly collects or
3 attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or
4 due another and is a "debt collector" as that term is defined by *15 U.S.C. § 1692a(6)*.

5 **FACTUAL ALLEGATIONS**

6 11. Defendant constantly and continuously places collection calls to Plaintiff seeking and
7 demanding payment for an alleged consumer debt.

8 12. On or around November 2008, Defendant contacted Plaintiff, stating that Plaintiff's
9 wages will be garnished if Plaintiff did not pay the alleged debt.

10 13. Defendant called Plaintiff at work at (602) 249-0212 and at Plaintiff's cell phone at
11 (602) 317-9244 to collect the alleged debt. (See Call Log attached as Exhibit A.)

12 14. Defendant called Plaintiff's cell phone approximately 15 times over a period of 2
13 months.

14 15. Defendant called Plaintiff's work approximately 4 times over a period of 2 months.

15 16. Defendant contacted Plaintiff from the following numbers: (800) 873-1673, (800) 230-
16 6074 and (603) 890-4034.

17 17. Defendant caller "Betty" contacted a third party co-worker, Norman Dong and asked Mr.
18 Dong to inform Plaintiff to call back. (See email from Mr. Dong attached as Exhibit B.)

19 18. Defendant callers "Tamika Bess" and "Jennifer White" left Plaintiff several voicemail
20 messages without disclosure of the fact that the call was made for the purpose of debt
21 collection. (See transcribed voicemail messages attached as Exhibit C.)

22 19. Defendant did not send Plaintiff a debt validation letter.

23 **COUNT I**
DEFENDANT VIOLATED THE FAIR DEBT COLLECTION PRACTICES ACT

24 20. Defendant violated the FDCPA based on the following:
25

- a. Defendant violated §1692c(b) of the FDCPA because Defendant engaged in prohibited communication practices by contacting Plaintiff's co-worker at work.
- b. Defendant violated §1692d of the FDCPA because Defendant engaged in harassing, oppressive, or abusive conduct every time Defendant conducted itself the natural consequence of which is to harass, oppress, or abuse in connection with the collection of a debt.
- c. Defendant Violated §1692d(5) of the FDCPA by causing a telephone to ring and engaging Plaintiff repeatedly and continuously with the intent to annoy, abuse, and harass.
- d. Defendant violated §1692d(6) of the FDCPA by placing telephone calls without meaningful disclosure of callers identity.
- e. Defendant violated §1692e(4) of the FDCPA because Defendant made a false or misleading statement by stating that Plaintiff's non-payment of debt will result in wage garnishment.
- f. Defendant violated §1692e(10) of the FDCPA by engaging in deceptive means to collect a debt by threatening to garnish Plaintiff's wages.
- g. Defendant violated §1692e(11) of the FDCPA by contacting Plaintiff and failing to state in subsequent communications that the call is from a debt collector and any information will be used for that purpose.
- h. Defendant violated §1692g(a)(1-5) by failing to provide appropriate notice of the debt within 5 days after the initial communication including: (1) the amount of the debt; (2) the name of the creditor to whom the debt is owed; (3) a statement that unless the consumer, within 30 days after receipt of the notice, disputes the validity of the debt, or any portion thereof, the debt will be assumed to be valid by the debt collector; (4) a statement that if the consumer notifies the debt

1 collector in writing within the 30-day period that the debt, or any portion thereof,
2 is disputed, the debt collector will obtain verification of the debt or a copy of a
3 judgment against the consumer and a copy of such verification or judgment will
4 be mailed to the consumer by the debt collector; and (5) a statement that, upon
5 the consumer's written request within the 30-day period, the debt collector will
6 provide the consumer with the name and address of the original creditor, if
7 different from the current creditor.

8 21. As a direct and proximate result of one or more or all of the statutory violations above
9 Plaintiff has suffered emotional distress (see Exhibit D).

10 WHEREFORE, Plaintiff, CRAIG ST. JOHN, respectfully requests judgment be entered
11 against Defendant, WINDHAM PROFESSIONALS INC., for the following:

12 22. Declaratory judgment that Defendant's conduct violated the Fair Debt Collection
13 Practices Act,

14 23. Statutory damages pursuant to the Fair Debt Collection Practices Act, *15 U.S.C. 1692k*,

15 24. Actual damages,

16 25. Costs and reasonable attorneys' fees pursuant to the Fair Debt Collection Practices Act,
17 *15 U.S.C. 1692k*

18 26. Any other relief that this Honorable Court deems appropriate.

19 **DEMAND FOR JURY TRIAL**

20 PLEASE TAKE NOTICE that Plaintiff, CRAIG ST. JOHN, demands a jury trial in this
21 cause of action.

22 RESPECTFULLY SUBMITTED,
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1 DATED: March 20, 2009

KROHN & MOSS, LTD.

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3 By: /s/Ryan Lee
4 Ryan Lee
5 Attorney for Plaintiff
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VERIFICATION OF COMPLAINT AND CERTIFICATION

STATE OF ARIZONA

Plaintiff, CRAIG ST. JOHN, states as follows:

1. I am the Plaintiff in this civil proceeding.
2. I have read the above-entitled civil Complaint prepared by my attorneys and I believe that all of the facts contained in it are true, to the best of my knowledge, information and belief formed after reasonable inquiry.
3. I believe that this civil Complaint is well grounded in fact and warranted by existing law or by a good faith argument for the extension, modification or reversal of existing law.
4. I believe that this civil Complaint is not interposed for any improper purpose, such as to harass any Defendant(s), cause unnecessary delay to any Defendant(s), or create a needless increase in the cost of litigation to any Defendant(s), named in the Complaint.
5. I have filed this Complaint in good faith and solely for the purposes set forth in it.
6. Each and every exhibit I have provided to my attorneys which has been attached to this Complaint is a true and correct copy of the original.
7. Except for clearly indicated redactions made by my attorneys where appropriate, I have not altered, changed, modified or fabricated these exhibits, except that some of the attached exhibits may contain some of my own handwritten notations.

Pursuant to 28 U.S.C. § 1746(2), I, CRAIG ST. JOHN, hereby declare (or certify, verify or state) under penalty of perjury that the foregoing is true and correct.

DATE: _____

3/10/09

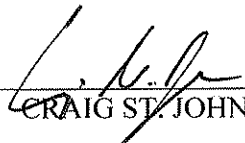

CRAIG ST. JOHN

EXHIBIT A

COLLECTION COMMUNICATIONS LOG

INSTRUCTIONS:

1. **DOCUMENT** immediately every communication you have with any debt collector, whether by letter, by phone or by message. Make detailed notes of any conversations you have with a debt collector during the conversation. Keep this log next to your phone.
2. **SAVE** every single voice mail, answering machine, collection letter, and paper message. Don't throw anything away, including the envelopes that the collection letters come in or anything included with the collection letter.

Date of Call? (MM/DD/YY)	Time of Call? (00:00 AM)	How Many Minutes Did Call Last? (Approx.)	Phone Call, Voice Mail, Letter, Paper Message?	Collector's Name?	Collection Agency Name and Telephone Number?	What Did Collector Say? Amount Demanded? Payment Terms? Threats? Profanity? Harassment? Legal Action? Calls to Friends or Neighbors? Abuse? (Use as many lines or pages as needed)
1 02/21/2009	10:00 am	20 sec	Voicemail	Tamika Bess	Windham Professionals 603-890-4034	"This is Tamika Bess, and it is very imperative that you call me today. My number is (800)873-1673 ext 7561."
2 02/24/2009	3:00 pm	20 sec	Voicemail	Jennifer W?	Windham Professionals 603-890-4034	"This message is for Craig St. John. My name is Jennifer W? and it is important that you return my call today. My number is (800)873-1673 ext 7138. Thank you."
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EXHIBIT B

From: Dong, Norman
Sent: Fri 12/19/2008 9:50 AM
To: St John, Craig
Subject:

Hey Craig

Betty called for you and said it is very important for you to call back.

1-800-230-6074 x2672

EXHIBIT C

This is a message is for Craig St. John, my name is Courtney; the number is 1-800-873-1673 ext 7039.

EXHIBIT D

I have suffered from the following due to, or made worse by, the actions of the Defendant's debt collection activities:

- | | | |
|---|--------------------------------------|-------------------------------------|
| 1. Sleeplessness | <input checked="" type="radio"/> YES | <input type="radio"/> NO |
| 2. Fear of answering the telephone | <input checked="" type="radio"/> YES | <input type="radio"/> NO |
| 3. Nervousness | <input checked="" type="radio"/> YES | <input type="radio"/> NO |
| 4. Fear of answering the door | <input checked="" type="radio"/> YES | <input type="radio"/> NO |
| 5. Embarrassment when speaking with family or friends | <input checked="" type="radio"/> YES | <input type="radio"/> NO |
| 6. Depressions (sad, anxious, or "empty" moods) | <input checked="" type="radio"/> YES | <input type="radio"/> NO |
| 7. Chest pains | <input type="radio"/> YES | <input checked="" type="radio"/> NO |
| 8. Feelings of hopelessness, pessimism | <input checked="" type="radio"/> YES | <input type="radio"/> NO |
| 9. Feelings of guilt, worthlessness, helplessness | <input checked="" type="radio"/> YES | <input type="radio"/> NO |
| 10. Appetite and/or weight loss or overeating and weight gain | <input checked="" type="radio"/> YES | <input type="radio"/> NO |
| 11. Thoughts of death, suicide or suicide attempts | <input type="radio"/> YES | <input checked="" type="radio"/> NO |
| 12. Restlessness or irritability | <input checked="" type="radio"/> YES | <input type="radio"/> NO |
| 13. Headache, nausea, chronic pain or fatigue | <input checked="" type="radio"/> YES | <input type="radio"/> NO |
| 14. Negative impact on my job | <input type="radio"/> YES | <input checked="" type="radio"/> NO |
| 15. Negative impact on my relationships | <input type="radio"/> YES | <input checked="" type="radio"/> NO |

Other physical or emotional symptoms you believe are associated with abusive debt collection activities: _____

Pursuant to 28 U.S.C. § 1746(2), I hereby declare (or certify, verify or state) under penalty of perjury that the foregoing is true and correct.

Dated: 3/10/09

Signed Name

Printed Name

CRAIG S. JOMN